

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HARRY T. COLLINS,

Plaintiff

v.

LINDA HUNTER, WARDEN RAPHAEL
WILLIAMS and CORRECTIONAL MEDICAL
SYSTEMS,

Defendants

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Civil Action No.: 05-624-SLR

JURY TRIAL DEMANDED

**MOTION OF DEFENDANT, CORRECTIONAL MEDICAL SERVICES, INC., FOR
ENTRY OF JUDGMENT PURSUANT TO FEDERAL RULE 54(b)**

Defendant, Correctional Medical Services, Inc., by and through its attorneys, moves before this Court to enter the attached Order, entering final judgment in this action and states as follows:

1. On January 12, 2007, the Court issued a Memorandum Opinion and Order in response to Correctional Medical Services Inc.'s Motion to Dismiss. A copy of the Court's Memorandum Opinion and Order of January 12, 2007, is attached hereto as Exhibit "A". D.I. 55 & 56.

2. In the Court's Opinion and Order of January 12, 2007, the Court held that plaintiff failed to state an actionable constitutional claim against Correctional Medical Services, Inc. for deliberate indifference to a serious medical need. The Court noted that the Complaint did not allege that either Warden Raphael Williams or Correctional Medical Services, Inc. were aware that plaintiff faced a substantial risk of serious harm or that they failed to take reasonable steps to avoid the harm. In addition, the Court found that the Complaint contained no allegations identifying a policy of practice of Correctional Medical Services, Inc. that suggested deliberate

indifference to plaintiff's serious medical needs. Therefore, the Court granted the Motions to Dismiss. Plaintiff, however, was given leave to file an amended complaint within thirty (30) days. On February 16, 2007, plaintiff filed an Amended Complaint against Warden Williams only. D.I. 62.

3. Pursuant to Federal Rule of Civil Procedure 54(b), Correctional Medical Services, Inc. moves this Honorable Court to enter final judgment on the Court's prior decision on Correctional Medical Services, Inc.'s Motion to Dismiss.

4. Rule 54(b) entitled "[j]udgment upon multiple claims or involving multiple parties", provides:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

5. There is no just reason to delay the entry of a final judgment as to Correctional Medical Services, Inc. in the present case. Correctional Medical Services, Inc. was dismissed because plaintiff failed to state an actionable constitutional claim against them for deliberate indifference to a serious medical need. Moreover, plaintiff never amended his Complaint against Correctional Medical Services, Inc. Entry of a final judgment as to Correctional Medical Services, Inc. would not hinder the progression of plaintiff's still active case.

WHEREFORE, defendant, Correctional Medical Services, Inc., respectfully moves this Honorable Court to enter the attached Order expressly determining that there is no just reason for delay and expressly directing entry of final judgment in favor of defendant, Correctional Medical Services, Inc.

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY : /s/ Kevin J. Connors

KEVIN J. CONNORS, ESQ.

DE Bar ID: 2135

1220 North Market Street, 5th Fl.

P.O. Box 8888

Wilmington, DE 19899-8888

Attorney for Defendant,

Correctional Medical Services, Inc.

Date: March 16, 2007

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CERTIFICATE OF SERVICE

I, KEVIN J. CONNORS, hereby certify that on this 16th day of March, 2007, that copies of the attached MOTION OF DEFENDANT, CORRECTIONAL MEDICAL SERVICES, INC., FOR ENTRY OF JUDGMENT PURSUANT TO FEDERAL RULE 54(b) have been served electronically via E-File & Serve.

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY : /s/ Kevin J. Connors

KEVIN J. CONNORS, ESQ.

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